

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

Geoffrey A. Davis, :
 :
Petitioner : Civil Action 2:08-cv-00729
 :
v. : Judge Smith
 :
State of Ohio, County of Washington, *et al.*, : Magistrate Judge Abel
 :
Respondents :

ORDER

Petitioner Geoffrey A. Davis, a State prisoner, brings this action under 28 U.S.C. §2254 alleging that he is in custody in violation of the Constitution of the United States. This matter is before the Court on Magistrate Judge Abel's July 30, 2008 Report and Recommendation that the petition for writ of habeas corpus under 28 U.S.C. §2254 be denied.

On August 6, 2008, petitioner Davis filed objections to the Report and Recommendation. Petitioner argues that he exhausted his state court remedies when he appealed his sentence to the Ohio Fourth Appellate District Court of Appeals, which reversed and remanded for re-sentencing. *State v. Davis*, 2006-Ohio-3549. He also argues that he is not attacking the validity or length of his confinement, only correcting the sentencing judge's sentencing error.

Upon *de novo* review as required by 28 U.S.C. §636(b)(1)(B), the Court ADOPTS the Report and Recommendation.

The petition alleges that on June 16, 2006 Davis's September 2005 sentence was vacated and his criminal case was remanded to the Ohio Court of Common Pleas for Washington County for re-sentencing. It further asserts that the September 2005 illegal sentence denied Davis due process of law, the equal protection of the laws, and his right to a jury trial. The petition seeks a new sentencing hearing in the trial court. Contrary to petitioner's arguments, this is a habeas corpus action because Davis seeks a modification of his sentence. Further, the petition does not allege that the claim that Davis is entitled to yet another sentencing hearing has been presented to the Ohio courts. Since petitioner has failed to demonstrate that he has exhausted his available Ohio court remedies, the petition must be dismissed. 28 U.S.C. §2254(b) and (c); *Picard v. Connor*, 404 U.S. 270, 92 S. Ct. 509, 30 L. Ed. 2d 438 (1971).

The petition for writ of habeas corpus is DENIED. This action is hereby DISMISSED. The Clerk of Court is DIRECTED to enter JUDGMENT for respondent.

s/ George C. Smith
George C. Smith
United States District Judge